right has been superseded by the Trading with the Enemy Acts. *In re Ferdinand, ex-Tsar of Bulgaria,* [1921], 1 Ch. 107.

The derivation of a rule from modern international usage had more to commend it in this case than in *The Marie Leonhardt, infra.* The usage had developed over a longer period and with more uniformity. Beginning at least as early as the sixteenth century, the rule that enemy private property within the country is subject to confiscation was gradually mitigated. Through municipal legislation, treaties, and common usage the practice developed of permitting enemies to remove, dispose of, or retain their property. There was no important instance of confiscation during the century which preceded the World War. There was also an impressive accumulation of theoretical opinion, including most European writers, in support of the alleged rule against confiscation. See CORBETT, LEADING CASES, [3rd Ed.], II, 61-2. The attitude of the courts, however, remained conservative. The old rule was asserted as late as the end of the seventeenth century. *Attorney-General* v. *Weeden,* (1699), Parker 267. At the beginning of the nineteenth century it was doubted whether the usage, apart from statute or treaty, had actually developed into a binding custom. *Johnson* v. *Twenty-One Bales,* (1814), 13 Fed. Cas. 855. It was held by the Supreme Court of the United States that war does not of itself work a confiscation, but said that war gives the right to confiscate. *Brown* v. *United States,* (1814), 8 Cr. 110. Lord Ellenborough's decision in *Wolff* v. *Oxholm,* (1817), 6 M. & S. 92, holding the Danish confiscatory ordinance contrary to the law of nations and void, was certainly anomalous and probably unsound from every point of view. In the twentieth century the outstanding event in this connection was the return to earlier practice in the treaties of peace at the end of the World War. See GARNER, INT. LAW AND THE WORLD WAR, I, ch. 4; SCHUSTER, THE PEACE TREATY IN ITS EFFECTS ON PRIVATE PROPERTY, BRITISH YEAR BOOK OF INT. LAW (1920-21), 167. The instant case concedes living force to the same harsh principle. It has been assailed as reactionary and dangerous. See 30 YALE L. JOUR. 845. But could the court safely have done otherwise than take the conservative position? While a supernational tribunal, had one existed, might well have derived a rule from modern international usage, it is not apparent that a national court under such circumstances can be expected to adventure so advanced a decision. Does not the criticism misconceive the function of national courts? See PICCIOTTO, RELATION OF INT. LAW TO THE LAW OF ENGLAND AND OF THE UNITED STATES, ch. 5 and *passim.*

LAW OF NATIONS—EFFECT OF CONCLUSION OF PEACE ON PROPERTY SUBJECT TO CONDEMNATION AS PRIZE—STATUS OF FREE CITY OF DANZIG.—At the outbreak of the war between Great Britain and Germany, three ships belonging to a Danzig corporation were seized as prize in British ports. Upon the conclusion of peace, the treaty reserved to the allied powers the right to retain and liquidate the property of German nationals within their territories, "including territories ceded to them by the present treaty," with a proviso that "German nationals who acquire *ipso facto* the nationality of

an allied or associated power in accordance with the provisions of the present treaty, will not be considered as German nationals." TREATY OF VERSAILLES, Part X, s. IV, art. 297, para. (*b*). The treaty also ceded the territory of Danzig to the principal allied and associated powers to be constituted a Free City. Part III, s. XI, arts. 100-108. The Danzig owners of the ships asked restoration and compensation, contending that they were not to be considered German nationals within the meaning of the treaty provisions. *Held,* that the ships must be condemned. Apart from the treaty, the conclusion of peace and the transfer of the claimants' allegiance to the Free City of Danzig did not revest property which became subject to condemnation during the war. The claimants were German nationals within the meaning of the treaty provisions. *The Blonde and Other Ships,* [1921], P. 155.

As regards neutral vessels captured during war, it has been a moot question whether they may be condemned after the conclusion of peace. Compare OPPENHEIM, INT. LAW, 2d ed., II, 436, and *The Doelwyk, Martens, Nouveau Recueil Général,* 2d Sér., XXVIII, 66, 85 (Italy, 1896). Enemy vessels, on the other hand, can hardly escape the decree of condemnation because peace has intervened. *The Blonde, supra;* 1 KENT, COMMENTARIES, 173. Nor does there appear to be any good reason for differentiating the case of German claimants who have become subjects of the Free City of Danzig from the case of those who have remained subjects of Germany. *The Marie Leonhardt,* [1921], P. 1. Furthermore, as a matter of treaty interpretation, it seems clear that the claimants were not German nationals who had acquired *ipso facto* the nationality of an allied or associated power. But the court went on to support its interpretation by emphasizing the notion that Danzig has been constituted "a new sovereign power" with an international status independent of Poland. This is the merest fiction. While it has been asserted on behalf of the allied and associated powers that the inhabitants of Danzig "form no part of the Polish state" (13 AM. JOUR. INT. LAW, 545, 549), the Treaty of Versailles (Art. 108), nevertheless, anticipates that Poland, in addition to its control of commerce and transportation, will "undertake the conduct of the foreign relations of the Free City of Danzig as well as the diplomatic protection of citizens of the City when abroad." If the court desired to consider the international status of Danzig, it ought to have given due weight to these facts.

LAW OF NATIONS—ENEMY MERCHANT SHIPS IN PORT AT OUTBREAK OF WAR—WHEN USAGE DEVELOPS INTO BINDING CUSTOM.—A German steamship was seized in the port of London at the outbreak of war. After the conclusion of peace the owners claimed the release of the ship on the ground that there is a customary rule of the law of nations, binding on prize courts, which requires a belligerent to allow enemy merchant ships within its ports at the outbreak of war a reasonable period of time in which to depart. *Held,* that enemy merchant ships in port at the outbreak of war are liable to seizure and condemnation as prize. *The Marie Leonhardt,* [1921], P. 1.

Usage is an important source of the law of nations as recognized and applied by the courts. *The Paquete Habana,* 175 U. S. 677. But when, to